

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a contract renewal for lease of the second floor at the Medical Examiner's Office with the Health District.

ADOPTED THIS 28th day of September, 2004.

CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Marvin Foust

Jorge C. Magaña, MD, FAAP, Director

LEASE AGREEMENT

This Lease (the "Lease") is entered into as of the date executed (the date of this Lease), by El Paso County, Texas ("Landlord"), and the El Paso City-County Health and Environmental District ("Tenant").

ARTICLE 1. PREMISES

Leased Premises

Section 1.01. In consideration of the mutual covenants and agreements of this Lease, and other good and valuable consideration, Landlord leases to Tenant the "Leased Premises" described as Five Thousand, Two Hundred Seventy-Six (5,276) square feet of space on the second floor of the El Paso County Medical Examiner's Building (the "Building") located at 4505 Alberta, El Paso, Texas 79905.

Acceptance of the Leased Premises

Section 1.02. Tenant is leasing the Leased Premises on an **as-is, where-is** basis with an understanding that tenant will be renovating areas, as agreed upon and identified in Exhibit A, attached hereto and made a part hereof. Tenant's occupancy of the Leased Premises is conclusive evidence that Tenant: (A) accepts the Leased Premises as suitable for the purposes for which they are leased, after agreed upon renovations; (B) accepts the Leased Premises as being in a good and satisfactory condition; (C) waives any patent defects in the Leased Premises and the Building; and (D) agrees that Leased Premises specified in this lease and exhibits are binding and conclusive for all purposes under this Lease.

ARTICLE 2. TERM

Term of the Lease

Section 2.01. Regardless of its date of execution, the lease term (the "Lease Term") is sixty months commencing September 1, 2004, and the expiration date is August 31, 2009. Provided, however, that Tenant may terminate this Lease at any time, for any reason, by giving Landlord Sixty (60) days written notice.

Extension of Lease Term

Section 2.02. Upon the mutual consent of Landlord and Tenant for each extension, the term of this Lease may be extended for an additional one, five-year periods. The extended term will begin on the day following the expiration date of the Lease Term which in turn may be extended for one additional period

of the same length to begin on the day following the expiration date of the immediately preceding extended term. All the terms and covenants of the original Lease Term apply to all extended lease terms; provided, however, that in no event shall this Lease be in force and effect after August 31, 2009, unless pursuant to holdover under Section 2.04.

Tenant may initiate such an extension of this Lease by giving Landlord notice of its intention to do so not later than 90 days before the then current lease term expires. Notice of the intention to exercise an option under this lease must, to be effective, be sent by mail or fax to Landlord as provide in Sections 12.03 and 12.04 no later than 90 days before the then current lease term expires. The extension of the then current lease term is effective upon the delivery of Landlord's written consent to Tenant. To be effective, Landlord's written consent must be delivered no later than 60 days before the then current lease term expires.

Surrender of the Premises

Section 2.03. Upon the Expiration Date or any earlier termination of this Lease, Tenant shall: (1) surrender to Landlord possession of the Leased Premises in as good a state of repair and condition as they existed when Landlord delivered possession to Tenant, reasonable wear and tear and damages or destruction by any insured casualty excepted, and (2) deliver to Landlord all keys to the Leased Premises. Tenant will maintain the premises and keep them free from waste or nuisance throughout the Lease term and extended lease terms. If Tenant neglects to reasonably maintain the Leased Premises, Landlord may, but is not required to, cause repairs or corrections to be made for damages caused by such failure to maintain the Leased Premises. Any reasonable costs incurred for repairs or corrections for which Tenant is responsible under this section are payable by Tenant to Landlord as additional rental on the next rental installment date.

Holdover

Section 2.04. If Tenant holds over and continues in possession of the Leased Premises after the Lease Term or any extended lease term expires, Tenant will be considered to be occupying the Leased Premises on a month-to-month tenancy, subject to all the terms of this Lease except that the monthly rent shall be 110% of the rent for the last month of the term or extended term of this Lease, provided, however, that the rent amount shall not increase if the holdover results from any delays caused by either the County of El Paso or the City of El Paso and such delay can be proved with documentation to be provided by Tenant. No payments of money by Tenant to Landlord after the termination of this Lease reinstate, continue, or extend the Lease Term and no extension of this Lease after the termination or expiration thereof is valid unless it is reduced to writing and signed by Landlord and Tenant. Nothing in this section may be construed to give Tenant the right to hold over beyond any expiration date or any

earlier termination of this Lease or preclude Landlord from having the right to dispossess or otherwise terminate Tenant's right of possession. Any month-to-month tenancy is terminable upon notice from Landlord.

ARTICLE 3. RENT

Rent

Section 3.01. Tenant will pay Landlord Six Thousand Two-Hundred and Fifty Dollars (6,250.00) per month, throughout the original Lease Term, in advance on the first day of each month without deduction or setoff except as provided for in this Agreement. This rent amount (the "Rent") is subject to an increase for the extended lease term in an amount which reflects the percentage increase in the CPI most closely related to health care costs as promulgated by the appropriate federal agency. The percentage increase in the CPI will be measured from the first day in the Original Term to the first day in the extension term. The proper adjustment shall be made when the CPI figures become available and backdated to the first day of the extension term. The first installment of Rent is due on the first day of the Lease Term. Installments of Rent are payable by Tenant in advance by the first day of each calendar month during the Lease Term.

Rent Payments

Section 3.02. All Rent is payable by Tenant at the times and in the amounts specified in this Lease in legal tender of the United States of America to Landlord at the address specified in Section 12.03 or to any other person or at any other address as Landlord may from time to time designate by notice to Tenant. Rent is payable by Tenant without notice, demand, abatement, deduction, or setoff except as expressly specified in this Lease. Tenant's obligation to pay Rent is independent of any obligation of Landlord under this Lease. If any installment of Rent is not paid within 15 days after it is due, Tenant shall pay a late charge in an amount equal to one percent (1%) of the delinquent installment of Rent when it pays the delinquent installment. Tenant shall pay two percent (2%) of the delinquent rental payment from the sixteenth (16th) day following the due date.

Section 3.03 In the event that Landlord and Tenant agree that Tenant shall perform public health and environmental services for Landlord, Tenant's rent payments may be offset by the contracted for price of public health and environmental services performed by Tenant for Landlord.

ARTICLE 4. MAINTENANCE AND REPAIR OF PREMISES

Repair of Premises by Tenant

Section 4.01. Tenant shall keep the Leased Premises and all fixtures and systems in good and tenantable condition.

Tenant shall pay the cost of repairs and replacements due to damage or injury to the Building or any part thereof caused directly by any Tenant Party or by any malfunction or misuse of any equipment installed by or on behalf of Tenant. This amount is payable by Tenant to Landlord within 30 business days after demand.

Cleaning and Maintenance

Section 4.02. Tenant shall provide for and pay the cost of maintenance and cleaning of the Leased Premises and all common areas, leased or otherwise, located on the second floor of the Building including hallways, elevators, and stairwells.

Damage or Destruction - Notice

Section 4.03. If the Leased Premises or any structures or improvements on them are damaged or destroyed by any casualty, Tenant must immediately give Landlord written notice of the damage or

destruction, including a general description of the damage and, as far as known to Tenant, the cause of the damage.

ARTICLE 5. UTILITIES AND SERVICES

Services and Maintenance by Landlord

Section 5.01. So long as Tenant is not in default under this Lease, Landlord will furnish the premises with the utilities and services described below, subject to the conditions and in accordance with the standards set forth herein:

Heating and Air Conditioning

a. Landlord shall ventilate the Leased Premises and furnish heat and air conditioning during the customary periods of the year when, and to the same extent, Landlord furnishes heat and air conditioning for other portions of the Building and when, in the reasonable judgment of Landlord, it is required for the comfortable occupancy of the Leased Premises. Such heating and air conditioning will be at the temperatures and amounts that Landlord deems standard and that Landlord furnishes for other portions of the Building, subject to any governmental requirements or standards relating to, among other things, energy conservation.

Elevators

b. Tenant shall have access to the elevator only for emergency use, for use to move heavy objects, and for use by persons to be accommodated under the American Disabilities Act (the "ADA").

Electricity

c. Landlord shall furnish electricity to the elevator and reception area of the Leased Premises only, subject to interruptions beyond Landlord's control. Tenant's use of electricity may at no time exceed the capacity of the feeders to the Building or the risers or wiring installation. Without Landlord's prior consent, Tenant may not install any equipment that would result in Tenant's connected load exceeding the watts per square foot of area within the Leased Premises for which the Building electrical system is designed or that would generate sufficient heat to affect the temperature otherwise maintained in the Leased Premises by the normal operation of the Building air conditioning equipment serving the Leased Premises. The

obligation of Landlord to provide or cause to be provided electricity is subject to the rules and regulations of the supplier of electricity and of any municipal or other governmental authority regulating the business of providing electricity. Landlord is not liable or responsible to Tenant for any loss, damage or expense Tenant sustains or incurs if either the quality or character of the electricity is changed or is no longer available or no longer suitable for Tenant's requirements. In the event the quality or character of electricity is changed or is no longer available or no longer suitable for Tenant's requirements, Tenant shall have the right and privilege of terminating this Lease and, declaring the same at an end, have no further obligations under this Lease. If Tenant terminates this Lease under this Section, the rent abates as of the date of Tenant's notice to Landlord of its intent to terminate this Lease pursuant to this section. Pursuant to this section, such notice is effective for 5 days; if Tenant does not surrender the Leased Premises within 5 days after providing such notice, the abatement of rent shall not be effective.

Fire Sprinkling and Smoke Detection System

- d. Landlord will provide and maintain the fire protection system (including sprinklers, smoke detectors, and heat sensors).

Maintaining Building Structure.

- e. Landlord covenants and agrees to maintain the structure of the Leased Premises including, but not limited to, the roof, exterior walls (including windows), floors, and foundation in good repair and condition during the term of this Lease.

Parking

- f. The Landlord will provide one parking space for a laboratory Director or designee. No other parking spaces may be used by Tenant or its visitors, including couriers/delivery persons.

Water

- g. Landlord shall furnish water for drinking, cleaning, and lavatory purposes at points designated by Landlord.

Additional Services

Section 5.02. Landlord may impose a reasonable charge for heating, ventilating and air conditioning (HVAC) provided because of special electrical, cooling, and ventilating needs created by Tenant's telephone equipment, computers, and other equipment or uses. Prior to Landlord imposing any additional charges under this Section, Landlord shall provide Tenant written documentation evidencing additional costs/expenses directly attributable to Tenant's use of the Leased Premises after the first six (6) months of its occupancy. This extra charge will not exceed the actual cost to Landlord for providing the extra or special heating, ventilation, and/or air conditioning.

Tenant's Obligations

Section 5.03. Tenant shall cooperate fully at all times with Landlord and abide by all regulations and requirements Landlord may prescribe for the use of all utilities and services.

Service Interruptions

Section 5.04. Landlord does not warrant that the services provided by Landlord will be free from any slow-down, interruption, or stoppage by governmental bodies, regulatory agencies, utility companies, and others supplying services or caused by the maintenance, repair, replacement, or improvement of any equipment involved in the furnishing of the services or caused by changes of services, alterations, strikes, lock-outs, labor controversies, fuel shortages, accidents, acts of God, the elements, or other

causes beyond the reasonable control of Landlord. Landlord shall use due diligence to resume the service upon any slow-down, interruption, or stoppage.

Unless caused by Landlord's gross negligence, no slow-down, interruption, or stoppage of the services may be construed as an eviction, actual or constructive, of Tenant or cause an abatement of Rent or in any manner or for any purpose relieve Tenant from its obligations under this Lease. However, in the event full service has not been resumed within thirty (30) days from the date of any slow-down, interruption or stoppage of services, Tenant shall have the right and privilege of terminating this Lease, declaring the same at an end, and have no further obligations under this Lease. Unless caused by Landlord's gross negligence, Landlord is not liable for damage to persons or property, or in default under this Lease, as a result of any slow-down, interruption, or stoppage.

Modifications

Section 5.05. Landlord reserves the right from time to time to make reasonable and nondiscriminatory modifications to the above standards for utilities and services by giving written notice to Tenant. Consultation, as to potential impact to newly installed equipment and renovated areas, between Landlord and Tenant prior to modification must occur, allowing Tenant to comment and provide necessary feedback.

ARTICLE 6. USE AND OCCUPANCY

Purpose

Section 6.01. Tenant will use the premises only for programs related to Bio-terrorism and food testing purposes and incidental uses and for no other purpose, unless Landlord gives Tenant prior written consent for a different use. No such uses shall be made of the premises that exceed those made by Bio Level III laboratories.

Use and Care of Leased Premises

Section 6.02. Tenant shall use and maintain the Leased Premises in a clean, careful, safe, and proper manner. Tenant will conduct itself, and will cause its officers, employees, agents, licensees, and invitees ("Tenant Parties") to conduct themselves with full regard for the rights, convenience, and welfare of all other tenants in the Building.

Parking

Section 6.03. Tenant and Tenant Parties will not use Medical Examiner Office parking spaces except for one space to be provided by Landlord for use by Laboratory Director or designee.

Storage, Equipment, Areas of Use

Section 6.04. Tenant will allow storage of the Medical Examiner's Office equipment and supplies in all areas not being leased by Tenant and allow access by Landlord personnel to all areas being used by Landlord. Tenant will not use Landlord's equipment and supplies. No Tenant Party will enter the Medical Examiner's areas of the Building unless necessary and with permission of the Medical Examiner's Office.

Compliance with Laws

Section 6.05. Tenant and Landlord shall comply with all laws, ordinances, orders, rules, and regulations of all governmental bodies (state, federal, and municipal) applicable to, or having jurisdiction over, the use, occupancy, operation, and maintenance of the Leased Premises and the Building, including without limitation, all applicable environmental and hazardous materials/substances laws and the Americans With Disabilities Act of 1990 (the "ADA") (those laws, ordinances, orders, rules, decisions, and regulations being called "Applicable Laws"). Tenant may not use or allow the Leased Premises to be used for any purpose prohibited by any Applicable Law or by any restrictive covenants applicable to the Building.

Waste and Damages

Section 6.06. Tenant may not deface or injure the Leased Premises or the Building or any part thereof or overload the floors of the Leased Premises. Tenant may not commit waste or permit waste to be committed or cause or permit any nuisance on or in the Leased Premises or the Building. Tenant shall pay Landlord on demand as Rent for any damage to the Leased Premises or to any other part of the Building caused by any negligence or willful act or any misuse or abuse (whether or not the misuse or abuse results from negligence or willful acts) by Tenant, Tenant Party, or any other person (except Landlord or any of its agents, employees, or contractors) not prohibited by Tenant from entering upon the Leased Premises, reasonable wear and tear excepted.

Hazardous Materials, Substances, and Waste

Section 6.07. Tenant may not:

- a. cause or permit the escape, disposal, or release in the Leased Premises or the Building of any biologically active, chemically active, or hazardous substances or materials (collectively, "hazardous

substances” or, alternatively, “hazardous materials” or “hazardous wastes”); or

b. bring or permit any other person or Tenant Party to bring any; hazardous substances into the Leased Premises or the Building unless necessary to carry out the purpose, or make use of the Premises, identified in Section 6.01.

Section 6.08. The terms “hazardous substances” or “hazardous materials” includes, but is not limited to, those substances defined or described as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq.; the Texas Water Code; the Texas Solid Waste Disposal Act; and other applicable state or local environmental laws and the regulations adopted under those Federal, State and local statutes (the “Hazardous Materials Laws”).

Section 6.09. Tenant shall dispose of and store, as necessary, all **biohazardous** substances in full compliance with Federal and State statutes, regulations, and guidelines including, but not limited to, the Occupational Safety and Health Administration standards, 29 C.F.R. Part 1910 (and Subpart Z, in particular).

Section 6.10. Each party shall immediately notify the other party in writing if the notifying party has actual knowledge of any of the following: (i) any enforcement, clean-up, removal or other governmental or regulatory action instituted, contemplated or threatened concerning the Leased Premises pursuant to any Hazardous Materials Laws; (ii) any claim made or threatened by any person against the notifying party or the Leased Premises relating to damage contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials on or about the Leased Premises; and (iii) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in, or removed from, the Leased Premises including any complaints, notices, warnings or asserted violations in connection therewith, all upon receipt by the notifying party of actual knowledge of any of the foregoing matters. The notifying party shall also supply, to the notice recipient as promptly as possible, and in any event within 10 calendar days after the notifying party first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Leased Premises or Tenant’s use thereof.

Section 6.11. Tenant shall execute affidavits, representations, and the like from time to time at Landlord's request concerning Tenant's best knowledge and

belief regarding the presence of hazardous substances in the Leased Premises and the Building.

Section 6.12. These covenants regarding hazardous materials survive the expiration or earlier termination of this Lease.

Entrance to Building by Tenant

Section 6.13. Tenant agrees to use, as its entrance into the Building, the Building's south-side entrance. Tenant agrees to pay for and change the door lock of the south-side entrance of the Building and will provide keys for said lock to the Medical Examiner Office personnel. Tenant will install a "buzzer" calling device on the second floor Leased Premises and at Tenant's Building entrance at the south-side of the Building to allow for entry and notice of entry by Tenant officers, employees, agents, licensees, and invitees. Tenant may not use the stairwell at the north end of the building except in case of emergency.

Signs

Section 6.14. Tenant will pay for and install a sign in a location agreed to by Landlord to direct any Tenant Party to the entrance on the south-side of the Building to be used by Tenant as its entrance into the Building. The sign also will direct that all mail and packages to be delivered to Tenant are to be delivered to Tillman Health Center, 222 Campbell Street, El Paso, Texas. The Medical Examiner's Office will not accept delivery of mail, packages, etc. for Tenant.

Otherwise, Tenant may not erect, place, or allow to be placed any sign, advertising matter, stand, booth, or showcase in or upon the doorsteps, vestibules, halls, corridors, doors, walls, windows, or pavement of the Building visible outside the Leased Premises (except for lettering on the door or doors to the Leased Premises as allowed by the Rules and Regulations attached as Exhibit B) without the prior consent of Landlord, the consent not to be unreasonably withheld.

Telephones

Section 6.15. Tenant agrees to install telephone system equipment for its use and to not use Landlord's telephone equipment. If Tenant installs telephone or data cables, Tenant shall, within 30 days after Tenant installs any telephone or data cables, Tenant, at its cost, deliver to Landlord two reproducible copies of "as-built" plans and specifications (1/8" scale) showing the location of the telephone and data cables.

Hazardous Use of Premises

Section 6.16. Tenant may not use or allow or permit the Leased Premises to be used in any way or for any purpose that:

- a. Landlord deems hazardous on account of the possibility of fire or other casualty;
- b. directly increases the rate of fire or other insurance for the Building or its contents or in respect of the operation of the Building; or
- c. renders the Building uninsurable at normal rates by responsible insurance carriers authorized to do business in the State of Texas or renders void or voidable any insurance on the Building.

Insurance Rate Increase

Section 6.17. If insurance premiums increase as a direct result of Tenant's use of the Leased Premises, then in addition to any other remedies Landlord may have, Tenant shall pay the amount of the increase to Landlord as Rent within 5 days after demand. Landlord acknowledges that Tenant's historical use of the Leased Premises has not caused the Building's insurance to increase.

Rules and Regulations

Section 6.18. Tenant and Tenant Parties must comply with all the Rules and Regulations of the Building and related facilities (as changed from time to time as hereinafter provided) as set out in the attached Exhibit B. Landlord may at any time change the Rules and Regulations or promulgate other Rules and Regulations as Landlord deems advisable for the safety, care, cleanliness, or orderliness of the Building and its premises. No changes are effective until a copy of the changes is delivered to Tenant. In the event Tenant determines that it cannot comply with such changes, Tenant shall have the right and privilege of terminating this Lease Agreement and have no further obligations under this Lease upon thirty (30) days written notice to Landlord. Tenant is responsible for the compliance with the Rules and Regulations by all parties related to Tenant. Landlord shall use reasonable efforts to enforce compliance by all other tenants with the Rules and Regulations from time to time in effect, but Landlord is not responsible to Tenant for failure of any person to comply with the Rules and Regulations.

Security

Section 6.19. At the end of Tenant's normal work day in the premises, Tenant will make reasonable efforts to ensure that all exterior entrances to the

building are locked unless other tenants of the building, or Landlord's employees, agents, or contractors are present in the building.

Fire Drills

Section 6.20. Tenant personnel shall participate in all fire drills conducted by the Medical Examiner's Office. Such drills will occur at least once per year.

Quiet Enjoyment

Section 6.21. If Tenant pays the Rent when due and timely performs all other obligations of Tenant under this Lease, then Tenant may peaceably and quietly enjoy the Leased Premises during the Lease Term without any disturbance from Landlord or from any other person claiming by, through, or under Landlord, but not otherwise, subject to the terms of this Lease and of any ordinances, leases, utility easements, or agreements to which this Lease is subordinate.

List of Tenant Personnel

Section 6.22. For purposes that include safety and security issues, Tenant shall provide the Medical Examiner's Office with a list containing a list of the Tenant personnel who will occupy and use the leased premises. Tenant will update the list as necessary to ensure that the list of such personnel is current.

ARTICLE 7. ALTERATIONS

Tenant Improvements

Section 7.1. Landlord hereby approves and authorizes Tenant to make the improvements to the Leased Premises as shown on the plans attached hereto as Exhibit A. Landlord agrees to make available a reasonable staging area for Tenant's contractors and to reasonably cooperate with the improvements to be done by Tenant.

Additional Alterations and Additions by Tenant

Section 7.02. Tenant will not make additional alterations or modifications to the Building or Leased Premises without the prior written consent of the County Commissioners Court or its designated representative for such purpose. Such consent shall be obtained by first notifying the El Paso County Engineer, at the address provided in Section 12.03, for approval.

Trade Fixtures

Section 7.03. Tenant has the right at all times to erect or install furniture, trade fixtures, and equipment as long as Tenant complies with all applicable governmental laws, ordinances, and regulations. Tenant may remove such items when this Lease terminates if Tenant is not in default at that time and the fixtures can be removed without structural damage to the Building or Leased Premises. Any removal of Tenant's property must be accomplished in a good and workmanlike manner so as not to damage the Leased Premises or the Building. If damage occurs, Tenant shall repair any damage to the Leased Premises or the Building caused by any removal. Any such items installed by Tenant not removed within 30 days after termination of the Lease are conclusively presumed to be abandoned by Tenant. Landlord may, at its option, take the possession of the property (including any special use improvements) and declare it to be the property of Landlord by notice to Tenant.

Upon request of Landlord, Tenant shall also remove, at its sole risk and expense, any special use improvements installed by or on behalf of Tenant in connection with the completion of any Tenant finish work or otherwise. The term "special use improvements" means all special improvements installed specifically

for use by Tenant and includes, without limitation, if installed, telephone and data cables, computer floors and cables, cafeteria equipment, telephones and telephone equipment, supplemental air conditioning units and related equipment, equipment supplying excess electricity to the Leased Premises, and similar items.

Alterations Required by Laws

Section 7.04. Landlord is responsible for making any alterations, additions, or improvements to the Leased Premises that are mandated by accessibility legal requirements. All alterations and improvements must comply with all such applicable laws. Neither Landlord's approval of Tenant's plans and specifications for the alterations or improvements nor Landlord's acceptance of Tenant's as-built plans is a confirmation or agreement by Landlord that the improvements and alterations comply with such applicable laws. The allocation of responsibility to Tenant for compliance with accessibility legal requirements with respect to the premises is a material inducement for the parties to enter this Lease.

Standards for Alterations

Section 7.05. All alterations, improvements, and additions in and to the Leased Premises requested by or made by Tenant must be made and/or performed at Tenant's expense.

ARTICLE 8. INSURANCE, FIRE, AND CASUALTY

Fire or Other Casualty

Section 8.01. If the Building or Leased Premises is so damaged by fire or other casualty that substantial alteration or reconstruction of the Building or any portion thereof cannot be promptly repaired by Landlord, then, and from the date of such damage, this Lease shall terminate, and rent and other obligations hereunder shall be due and payable only to the date of such damage.

If this Lease is not terminated under this Section, Landlord shall within 10 days after the date of the damage commence to repair and restore the Building including any damage to the Leased Premises (except that Landlord is not responsible for delays outside its control) to substantially the same condition it was in immediately prior to the casualty. Except for damages caused by the negligence or willful misconduct of Landlord, Landlord is not required to rebuild, repair, or replace any part of Tenant's furniture or furnishings or fixtures and equipment removable by Tenant under the provisions of this Lease. Landlord is not liable for any inconvenience or annoyance to any Tenant Party or injury to the business of Tenant resulting in any way from casualty damage or the repairs; provided, during the time and to the extent the Leased Premises are unfit for occupancy, Landlord shall either furnish Tenant with comparable office space at prevailing market rates or a fair diminution of Rent, the choice of which is at Landlord's sole discretion.

If the damages are caused by the negligence or willful misconduct of any Tenant Party, Rent does not abate and Tenant shall pay to Landlord on demand as additional Rent any damages in excess of the amount paid by insurance proceeds received by Landlord. Any insurance carried by Landlord or Tenant against loss or damage to the Building or to the Leased Premises is for the sole benefit of the party carrying the insurance and under its sole control.

ARTICLE 9. INDEMNIFICATIONS AND WAIVERS

Environmental Indemnity and Remediation

Section 9.01. Tenant is responsible for payment of that portion of any cleanup costs necessary for compliance with Hazardous Materials Laws that arise as a result of Tenant's discharge (by act or omission) of hazardous materials in and around the Leased Premises and Building during Tenant's occupancy of the Leased Premises.

In the event Tenant causes such discharge, Tenant, at Tenant's sole cost and expense, shall promptly and diligently remove such Hazardous Materials from the Leased Premises or surrounding premises to the extent reasonably possible in accordance with the requirement of the applicable Hazardous Materials Laws and industry standard then prevailing in the Hazardous Materials management and remediation industry in the State of Texas; provided, however, in no event shall Tenant be liable for any contamination caused by the act or omission of Landlord or any other party or the remediation required thereby. Tenant shall not take any required remedial action in response to any Tenant's Contamination in or about the Leased Premises or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Tenant's Contamination without first notifying Landlord of Tenant's intention to do so and affording Landlord the opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interest with respect thereto. In addition to all other rights and remedies of the Landlord hereunder, if Tenant does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Tenant's Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Tenant's Contamination within 30 days after Landlord has reasonably approved Tenant's remediation plan and all necessary approvals and consents have been obtained and thereafter continue to prosecute said remediation to completion in accordance with the approved remediation plan, then Landlord, at its sole discretion, shall have the right, but not the obligation, to cause said remediation to be accomplished, and Tenant shall reimburse Landlord within 15 business days of Landlord's demand for reimbursement of all amounts reasonably paid by Landlord (together with interest on said amounts at the highest lawful rate until paid, when said demand is accompanied

by proof of payment by Landlord of the amounts demanded. Tenant shall promptly deliver to Landlord copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Premises as part of Tenant's remediation of any Tenant's Contamination.

_____ This section survives the expiration or earlier termination of this Lease.

Section 9.02. _____ If any lender or governmental agency requires testing to ascertain whether or not a release of hazardous substances has occurred in, or on, the Leased Premises or the Building based on a reasonable belief that a release occurred and was caused by any Tenant Party, then Tenant shall reimburse the reasonable costs of the testing to Landlord on demand as Rent.

_____ This section survives the expiration or earlier termination of this Lease.

Limitations on Liability of Landlord; Waiver

Section 9.03. _____ **LANDLORD IS NOT LIABLE TO ANY TENANT PARTY OR ANY OTHER PERSON, AND TENANT WAIVES ANY LIABILITY OF LANDLORD, FOR:**

- a. **ANY INJURY OR DAMAGE TO PERSON OR PROPERTY DUE TO ANY PATENT DEFECT IN, THE BUILDING OR LEASED PREMISES THAT EXIST NOW OR OCCURS IN THE FUTURE.**
- b. **ANY INJURY OR DAMAGE TO PERSON OR PROPERTY DUE TO THE CONDITION OR DESIGN OF THE LEASED PREMISES THAT EXISTS NOW OR OCCURS IN THE FUTURE.**
- c. **ANY LOSS OR DAMAGE CAUSED BY THE ACTS OR OMISSIONS OF OTHER TENANTS IN THE BUILDING; OR**
- d. **ANY LOSS OR DAMAGE TO PROPERTY OR PERSON OCCASIONED BY THEFT, FIRE, ACT OF GOD, PUBLIC ENEMY, INJUNCTION, RIOT, INSURRECTION, WAR, COURT ORDER, REQUISITION, ORDER OF GOVERNMENTAL AUTHORITY, AND ANY OTHER CAUSE BEYOND THE CONTROL OF LANDLORD.**

Assumption of Risk

Section 9.04. _____ All personal property in the Leased Premises is at the sole risk of Tenant.

Section 9.05. **THE PROVISIONS OF THIS ARTICLE ARE APPLICABLE NOTWITHSTANDING THE ACTUAL OR ALLEGED NEGLIGENCE OF LANDLORD.**

ARTICLE 10. ASSIGNMENT AND SUBLETTING

Section 10.01. Tenant may not: (1) assign or transfer this Lease or any interest therein; (2) permit any assignment of this Lease or any interest therein by operation of law; (3) sublet the Leased Premises or any part thereof; (4) grant any license, concession, or other right of occupancy of any portion of the Leased Premises; (5) mortgage, pledge, or otherwise encumber its interest in this Lease; or (6) permit the use of the Leased Premises by any parties other than Tenant and its employees. Notwithstanding the foregoing, Tenant may, in the event that the City of El Paso establishes a Public Health Department, assign this Lease to the City of El Paso.

Section 10.02. Any attempted assignment or sublease by Tenant or any attempted reorganization of Tenant in violation of the terms of this Paragraph is void.

ARTICLE 11. DEFAULT

Events of Default

Section 11.01. The following are events of default ("Events of Default") by Tenant under this Lease:

- a. Tenant fails to pay any Rent when due and the failure continues for a period of 30 days.
- b. Tenant fails to comply with any of the terms of this Lease, other than the payment of Rent, and does not cure the failure within 30 days after Landlord delivers notice of the failure to Tenant.
- c. Tenant becomes insolvent, makes a transfer in fraud of creditors, commits any act of bankruptcy, makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due.
- d. Tenant assigns its duties or rights under this lease or sublets its tenancy.

Landlord's Remedies

Section 11.02. If an Event of Default occurs, Landlord may then, or any time thereafter while the Event of Default continues and without any further notice or opportunity to cure except as expressly set forth in this Paragraph, pursue any one or more of the following remedies:

- a. Terminate this Lease (without terminating Tenant's obligation to pay rent for the balance of the Lease Term) by giving notice to Tenant, in which event Tenant shall immediately surrender the Leased Premises to Landlord. If Tenant fails to surrender the Leased Premises, Landlord may, without prejudice to any other remedy it has for possession or arrearages in Rent, take possession of the Leased Premises and expel or remove Tenant and any other person occupying the Leased Premises, or any part thereof, without being liable for prosecution or any claim of damages.
- b. Take possession of the Leased Premises and remove Tenant or any other person occupying the Leased Premises, or any part thereof, without having any civil or criminal liability and without terminating this Lease.
- c. At Landlord's option, Landlord may continue this Lease in effect for so long as Landlord does not terminate Tenant's right to possession and Landlord may enforce rent as it becomes due, such an amount not to exceed the total amount of unpaid rent through the end of the lease period. For purposes of this section, efforts by Landlord to maintain, preserve or relet the Premises or the appointment of a receiver upon initiative of the Landlord to protect the Landlord's interest under this Lease shall not constitute a termination of the Tenant's right to possession.
- d. Notwithstanding anything contained in this Lease to the contrary, no act or omission of Landlord shall be construed as a termination of this Lease. Landlord shall terminate such Lease only in writing by mailing or delivering to Tenant notice of such termination.

Section 11.03. No repossession of or reentering all or any part of the Leased Premises under Section 11.02 above or otherwise relieves Tenant of any liabilities or obligations under this Lease, all of which survive repossession or reentering by Landlord. If Landlord repossesses or reenters all or any part of the Leased Premises after an Event of Default, Tenant shall pay to Landlord the Rent required to be paid by Tenant. No right or remedy of Landlord under this Lease is intended to be exclusive of any other right or remedy. Each right and remedy of Landlord is cumulative and all other rights or remedies under this Lease or now or hereafter existing at law, in equity or by statute. In addition to other remedies provided in this Lease, Landlord is entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or

attempted or threatened violation, of any of the terms of this Lease, or to a decree compelling specific performance of the terms of this Lease.

Notice of Landlord's Default

Section 11.04. If any act or omission by Landlord occurs that would give Tenant the right to damages from Landlord or the right to terminate this Lease due to constructive or actual eviction from all or part of the Leased Premises or otherwise, Tenant may not sue for damages or exercise any right to terminate until (A) it gives notice of the act or omission to Landlord and (B) a reasonable period of time not to exceed 30 days for remedying the act or omission elapses following the giving of the notice, during which time Landlord is entitled to enter the Leased Premises and cure the act or omission. During the period after the giving of the notice and during the curing of the act or omission, the Rent payable by Tenant abates only to the extent that any part of the Leased Premises is untenantable.

Cumulative Remedies

Section 11.05. Landlord's or Tenant's pursuing any remedy provided in this Lease will not preclude pursuing any other remedy provided in this Lease. The pursuit by either party of any remedy provided in this Lease or by law will not constitute a forfeiture or waiver of any damages accruing to either party by reason of a violation of any term or covenant of this lease, nor will Landlord's pursuit of any remedies provided in this Lease constitute a waiver or forfeiture of any rent due under this lease.

Waiver of Default

Section 11.06. Either party's waver of any default or of any violation or breach of any term or covenant of this Lease does not waive any other violation or breach of any term or covenant of the Lease, nor does either party's forbearance to enforce one or more of the remedies provided in this Lease or by law on a default waive the default. Landlord's acceptance of rent following default under this Lease does not waive the default.

Surrender of Premises

Section 11.07. No act done by Landlord or its agents during the Lease term may be considered an acceptance of a surrender of the Leased Premises, and no agreement to accept a surrender of the Leased Premises is valid unless in writing and subscribed by Landlord.

ARTICLE 12. MISCELLANEOUS PROVISIONS

Rights Reserved by Landlord

Section 12.01. Landlord reserves the following rights, exercisable without notice unless otherwise specified and (1) without effecting an eviction, constructive or actual, or disturbance of Tenant's use or possession, and (2) without giving rise to any claim for setoff or abatement of Rent:

- a. To change the Building's name.
- b. To install, affix, and maintain any signs on the exterior and interior of the Building so long as the signs do not have a material adverse effect on Tenant's use and enjoyment of the Leased Premises.
- c. To designate and approve, prior to installation, all types of window shades, blinds, drapes, awnings, window ventilators that are visible from the exterior of the Building.
- d. The general, exclusive right to designate, restrict, limit, and control access to any part of the Building - this right does not include such direct control over the Leased Premises, except as specifically provided elsewhere in this Lease, but does consist of direct control over the remainder of the Building and real property.
- e. To enter upon the Leased Premises at reasonable hours to inspect, clean, maintain, or make repairs or alterations to the Leased Premises (but without any obligation to do so, except as expressly specified in this Lease), to make repairs or alterations to any part of the Building or the Building systems (including adjacent premises), to show the Leased Premises to prospective lenders, purchasers, and, during the last 3 months of the Lease Term, to show the Leased Premises to prospective tenants at reasonable hours and, if the Leased Premises are vacant, to prepare them for re-occupancy. Tenant is not entitled to any abatement or reduction of rent by reason of the entry of Landlord or any of its officers, agents, representatives, or employees under this article, nor will such an entry be considered an actual or constructive eviction, pursuant to terms set forth under Section 6.04.
- f. To retain at all times, and to use in extreme emergencies, keys to all doors (including those Tenant makes pursuant to Section 6.13) within and into the Leased Premises. No locks may be changed or added without the prior consent of Landlord or as provided for in Section 6.13.
- g. To decorate and make repairs, alterations, additions, changes, or improvements, whether structural or otherwise, in and about the Building and for those purposes to enter upon the Leased Premises and, during

the continuance of the work, temporarily close doors, entryways, public space, and corridors in the Building, to interrupt or temporarily suspend Building services and facilities, and to change the arrangement and location of entrances or passageways, doors and doorways, corridors, stairs, toilets, or other public parts of the Building, all without abatement or setoff of Rent or affecting any of Tenant's obligations under this Lease, so long as the Leased Premises are reasonably accessible and useable as reasonably necessary for Tenant's use and purpose, but, if said Building and Leased Premises, as a result of any repairs, alterations, or changes are no longer accessible or useable for Tenant's use and purpose or said premises are rendered unfit for occupancy, then, from the date of such repairs or alterations, this Lease shall terminate and Rent and other obligations hereunder shall be due and payable only to the date of such repairs or alterations.

h. To have and retain a paramount title to the Leased Premises and the Building free and clear of any act of Tenant purporting to burden or encumber the Leased Premises or the Building.

i. To grant to anyone the exclusive right to conduct any business or render any service in or to the Building, provided the exclusive right does not (1) operate to exclude Tenant from the uses expressly permitted in this Lease, (2) endanger Tenant, or (3) interfere with Tenant's use and enjoyment of the Leased Premises.

j. To approve the weight, size, and location of safes and other heavy equipment and items in and about the Leased Premises and the Building that can affect the integrity of the Leased Premises and the Building and to require all those items to be moved into and out of the Building and the Leased Premises only at times and in a manner specified by Landlord. Movements of Tenant's property into or out of the Building and within the Building are entirely at the risk and responsibility of Tenant.

k. To take reasonable measures as Landlord deems advisable for the security of the Building and its occupants including, without limitation, the search of all persons entering or leaving the Building, and the evacuation of the Building for cause, suspected cause, or for drill purposes.

l. To store equipment and supplies in all areas not under lease to Tenant (whether leased or not) and gain access to all areas being used by Landlord and to all areas not being leased by Tenant.

Notices

Section 12.02. Notices under this Lease are to be delivered to the following addresses or to any other addresses either party may designate by 10 days' prior notice to the other party:

a. LANDLORD:

The County of El Paso, Texas
Attn: County Judge
500 E. San Antonio, Ste. 301
El Paso, Texas 79901
(915) 546-2098
Fax: (915) 546-2198

With a copy to:

Office of the Medical Examiner
Attn: Administrator
4505 Alberta
El Paso, Texas 79905
(915) 532-6630
Fax: (915) 532-1447

For repairs and alterations:

County Engineer
Road and Bridge Dept.
500 E. San Antonio, Ste. 407
El Paso, Texas 89901
(915) 546-2015

Facilities Manager
County Facilities Management
500 E. San Antonio, Ste. M-1
El Paso, Texas 79901
(915) 546-2009

b. TENANT:

El Paso City-County Health and Environmental District
Attn: Dr. Jorge Magana, Director
5115 El Paso
El Paso, Texas 79925
Phone: (915) 771-5702
Fax: 771-5729

Section 12.03. All notices, requests, approvals, and other communications required, or permitted, to be delivered under this Lease must be in writing and are effective:

- a. on the business day sent if sent by telecopier prior to 5:00 p.m., El Paso, Texas time, and the sending telecopier generates a written confirmation of sending;
- b. the next business day after delivery on a business day to a nationally-recognized-overnight-courier service for prepaid overnight delivery;
- c. if orderly delivery of the mail is not then disrupted or threatened, in which event some method of delivery other than the mail must be used, three days after being deposited in the United States mail, certified, return receipt requested, postage prepaid; or
- d. upon receipt if delivered personally or by any method other than by telecopier (with written confirmation), nationally-recognized-overnight-courier service, or mail;

Severability

Section 12.04. If any one or more of the provisions in this Lease are for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of this Lease, and this Lease will be construed as if it had not included the invalid, illegal, or unenforceable provision.

Force Majeure

Section 12.05. Neither Landlord nor Tenant is required to perform any term or covenant of this Lease so long as performance is delayed or prevented by *force majeure*, which includes acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within Landlord's or Tenant's control and that Landlord or Tenant, by exercising due diligence and paying money, cannot prevent or overcome in whole or in part. But, if said Building and Leased Premises become so damaged as to render said premises unfit for occupancy, then, and from the date of such damage, this Lease shall terminate; and Rent and other obligations hereunder shall be due and payable only to the date of such damage.

Gender

Section 12.06. Words of any gender used in this Lease include any other gender and words in the singular number include the plural, unless the context otherwise requires.

No Representations

Section 12.07. Landlord or Landlord's agents made no representations or promises with respect to the Leased Premises or the Building except as expressly set forth in this Lease. No rights, easements, or licenses are acquired by Tenant by implication, or otherwise, except as expressly set forth in this Lease.

Entire Agreement; Amendments

Section 12.09. This Lease is the entire agreement between the parties. All negotiations, considerations, representations, and understandings between Landlord and Tenant are incorporated in this Lease. No act or omission of any employee or agent of Landlord or of Landlord's Broker may alter, change, or modify any of the terms of this Lease. No amendment or modification of this Lease is binding unless expressed in a written instrument executed by Landlord and Tenant.

Section Headings

Section 12.8. The section headings in this Lease are for convenience only and in no way enlarge or limit the scope or meaning of the paragraphs in this Lease.

Binding Effect

Section 12.9. All terms of this Lease are binding upon the respective successors of Landlord and Tenant.

Counterparts

Section 12.10. This Lease may be executed in two or more counterparts, each of which is deemed an original and all of which together constitute one and the same instrument.

Texas Law to Apply

Section 12.11. This agreement is to be construed under Texas law, and venue for all legal matters is in El Paso County, Texas. All obligations of the parties created by this agreement are performable in El Paso County, Texas.

Amendment

Section 12.12. No amendment, modification, or alteration of the terms of this agreement is binding unless in writing, dated subsequent to the date of this agreement, and duly executed by the parties.

Rights and Remedies Cumulative

Section 12.13. The rights and remedies provided by this Lease are cumulative, and use by either party of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may; have by law, statute, ordinance, or otherwise.

No Implied Waiver

Section 12.14. The failure of Landlord or Tenant to insist at any time upon the strict performance of any of the terms of this Lease or to exercise any option, right, power, or remedy contained in this Lease is not a waiver of the right or remedy for the future. The waiver of any breach of this Lease or violation of the Rules and Regulations attached to this Lease does not prevent a subsequent act, which would have originally constituted a breach or violation, from having all the force and effect of an original breach or violation. No express waiver affects any terms other than the ones specified in the waiver and those only for the time and in the manner specifically stated. Acceptance by Landlord of any Rent after the breach of any of the terms of this Lease or violation of any Rule or Regulation is not a waiver of the breach or violation or the right to collect applicable late charges and interest, and no waiver by Landlord of any of the terms of this Lease is effective unless expressed in writing and signed by Landlord.

Estoppel Certificate

Section 12.15. Tenant agrees, at any time, and from time to time, upon not less than thirty (30) days' prior notice by the Landlord, to execute, acknowledge and deliver to the other party a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications that same is in full force and effect as modified and stating the modifications), setting forth the dates to which rental, additional rental, and any other charges have been paid.

Condemnation

Section 12.16. If during the term of this Lease, any portions of the Leased Premises shall be condemned for any public purpose, either party hereto shall have the option of terminating and canceling this Lease upon thirty (30) days notice to the other party of its election to do so. In the event of condemnation of the whole or any part of the Leased Premises, all compensation awarded or paid in the event of such taking shall belong to and be the property of Landlord, except that compensation awarded for diminution in value of the leasehold shall belong to Tenant, provided, however, that Landlord shall have no interest in any award made to Tenant for loss of business or depreciation to and cost of removal of Tenant's stock and fixtures and other property, if a separate award for such items is made to Tenant.

ARTICLE 13. EXECUTION AND APPROVAL OF LEASE

Section 13.01. Employees and agents of Landlord have no authority to make or agree to make a lease or any other agreement or undertaking in connection herewith. The submission of this Lease for examination and negotiation is not an offer to lease, agreement to reserve, or option to lease the Leased Premises. This Lease is effective and binding on Landlord only upon the execution and delivery of this Lease by Landlord and Tenant.

ARTICLE 14. EXHIBITS

Section 14.01. The following exhibits are attached to and made a part of this Lease: Exhibit A (Tenant Renovation Plans) and Exhibit B (Building Rules and Regulations).

This Lease is executed in multiple originals as of the date first above set forth.

LANDLORD:

**ATTEST:
TEXAS**

COUNTY OF EL PASO,

County Clerk

By _____
County Judge Dolores Briones
September 20, 2004

Approved as to form:

Assistant County Attorney

TENANT:

Reviewed for Fiscal Implications:

**El Paso City-County Health
and Environmental District**

Mark Everett

Public Health Administrator

Date:_____

By_____

Dr. Jorge Magaña

Director

Date:_____

Approved as to form:

Assistant City Attorney

Exhibit A

Tenant Renovation Plans

EXHIBIT B

to Lease by and between

El Paso City-County Health and Environmental District

and

El Paso County, Texas, as Landlord

BUILDING RULES AND REGULATIONS

1. Other than for research purposes no birds, animals, reptiles, or any other creatures may be brought into or about the Building except to assist disabled persons.
2. Nothing may be swept or thrown into the corridors, halls, or stairways.
3. Tenant may not make or permit any improper noises in the Building, create a nuisance, or do or permit anything which, in Landlord's sole judgment, interferes in any way with other tenants or persons having business with them.
4. No equipment of any kind may be operated on the Leased Premises that could in any way annoy any other tenant in the Building.
5. Tenant shall cooperate with Building employees in keeping the Leased Premises neat and clean.
6. Corridor doors, when not in use, must be kept closed.
7. Tenant shall notify the County Medical Examiner of any and all services being rendered on behalf of Tenant by Tenant and its contractors, contractor's representatives, or installation technicians on or to the Leased Premises. This provision applies to all work performed in the Building, including installation of telephones, telephone equipment, electrical devices, and attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceiling, equipment, or any other physical portion of the Building.
8. Sidewalks, doorways, vestibules, halls, stairways, and similar areas may not be obstructed by any Tenant Party, or used for any purpose other than ingress and egress to and from the Leased Premises, or for going from one part of the Building to another part of the Building. No furniture may

be placed in front of the Building or in any lobby or corridor without prior consent of Landlord.

9. Landlord or its agents or employees may enter the Leased Premises to examine the same or to make repairs, alterations, or additions as Landlord deems necessary for the safety, preservation, or improvement of the Building. Prior to entering the Leased Premises, Tenant will be given at least three (3) business days advance written notice of any entry. All entries shall be conducted in a manner as will not unduly interfere with the performance of Tenant's activities.
10. Landlord may require all Tenant Parties to evacuate the Building in the event of an emergency or catastrophe.
11. Tenant may not do anything, or permit anything to be done, in or about the Building, or bring or keep anything in the Building that in any way increases the possibility of fire or other casualty, or do anything in conflict with the valid laws, rules, or regulations of any governmental authority.
12. Landlord may prescribe the weight and position of safes and other heavy equipment that may overstress any portion of the floor. All damage done to the Building that is the direct result of improper placing of heavy items that overstress the floor will be repaired at the sole expense of the Tenant.
13. No additional locks may be placed on any doors except as provided for under the Lease or without the prior consent of Landlord. All necessary keys must be furnished by Landlord and must be surrendered to Landlord upon termination of this Lease. Tenant shall then give Landlord the combination for all locks on the doors.
14. Plumbing and appliances may be used only for the purposes for which constructed. No sweeping, rubbish, rags, or other unsuitable material may be thrown or placed therein. Any stoppage or damage resulting to any fixtures or appliances directly resulting from misuse by any Tenant or Tenant Party is payable by Tenant.
15. No signs, posters, advertisements, or notices may be painted or affixed on any windows, doors, or other parts of the Building, except in colors, sizes, and styles, and in places, approved in advance by Landlord, the approval not to be unreasonably withheld.
16. Landlord may rescind any of these Rules and Regulations and make other future Rules and Regulations as in the judgment of Landlord are from time to time needed for the safety, protection, care, and cleanliness of the Building, the operation thereof, the preservation of good order therein, and the protection and comfort of its tenants, their agents, employees, and

invitees. Those rules, when made and notice thereof given to a tenant, are binding upon the tenant in the same manner as the original rules. Tenant covenants and agrees to abide by any and all reasonable rules and regulations promulgated by Landlord for the proper operation of the subject Leased property and Building; provided only that all rules promulgated subsequent to the commencement of this Lease be submitted to Tenant for consideration and comment at least thirty (30) days prior to implementation.

17. Tenant will use its best efforts to not permit any Tenant Party to hold, carry, smoke, or dispose of a lighted cigar, cigarette, pipe, or any other lighted smoking equipment in any common area of the Building. The common areas include, but are not limited to, all rest rooms, common corridors, stairwells, first floor lobbies, and other areas used in common with other tenants and occupants of the Building.
18. No provision in the Lease or these Rules and Regulations should be construed in any manner as permitting, consenting to or authorizing Tenant to violate requirements under ADA or the Texas Architectural Barriers Act (**TABA**), and any provision of the Lease or these Rules and Regulations which could be construed as authorizing a violation of ADA or TABA shall be interpreted in a manner which permits compliance with ADA and TABA, and the Lease and these Rules and Regulations are deemed to permit such compliance.